



#16

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al. Art Unit : 1745
Serial No. : 09/558,645 Examiner : L. Edmondson
Filed : April 26, 2000
Title : CATHODE FOR AIR ASSISTED BATTERY

RECEIVED

MAR 11 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. §§1.8(b) and 1.181, applicants hereby requests that the Notice of Abandonment mailed August 4, 2003 (copy enclosed) be withdrawn. The application was abandoned under 37 C.F.R. § 1.135 for failure to respond to the Office action mailed December 24, 2002.

Enclosed are copies of the Reply and Comments on Statement of Reasons for Allowance mailed on March 24, 2003. Also enclosed is a copy of the postcard stamped received by the PTO Mailroom on March 31, 2003. The Reply and Comments on Statement of Reasons for Allowance include a certification that these documents were deposited with the United States Postal Service as first class mail with sufficient postage on March 24, 2003; the certification was signed by the undersigned attorney's secretary, Sherry L. Hunt. Enclosed is a Statement Of Timely Mailing Under 37 C.F.R. § 1.8 Statement Of Sherry L. Hunt

Thus, the Notice of Abandonment was issued in error and Applicants respectfully request that it be withdrawn and the application processed for issuance. Because the Notice of Abandonment was issued as a result of an error by the Patent Office, we believe that no fees are required for our request. If that is not correct, please charge the required fees to our Deposit Account No. 06-1050.

RECEIVED
MAY 11 2004
TC 1700

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

August 8, 2003

Date of Deposit

Signature

Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645
Filed : April 26, 2000
Page : 2 of 2

Attorney's Docket No.: 08935-170001 / M-4860

Please apply any other charges or credits to Deposit Account No. 06-1050.

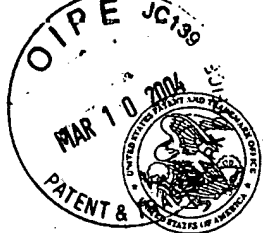
Respectfully submitted,

Date: August 8, 2003

Tu N. Nguyen
Tu N. Nguyen
Reg. No. 42,934

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20706274.doc



KCN
JAK

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,645	04/26/2000	Alexander Kaplan	08935-170001/M-4860	9640

26161 7590 08/04/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

RECEIVED

AUG 06 2003

FISH & RICHARDSON, P.C.
BOSTON OFFICE

EXAMINER

EDMONDSON, LYNNE RENEE

ART UNIT PAPER NUMBER

1725

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Docketed By Practice Systems	
Action Code:	ABN-PTOECO
Base Date:	8-4-03
Due Date:	10-4-03
Deadline:	10-4-03
Initial:	JMG

RECEIVED
MAY 11 2004
TC 1700

Docketed By Billing Secretary	
Due Date:	
Deadline:	
Initials:	

RECEIVED

MAR 11 2004

MAR 10 2004

**Notice of Abandonment**

Application No.

09/558,645

Examiner

Lynne Edmondson

Applicant(s)

KAPLAN ET AL.

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 24 December 2002.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

RECEIVED
MAY 11 2004
TC 1700

[Signature]
7/31/03

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.



1725
#16 skubyl
11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al. Art Unit : 1745
Serial No. : 09/558,645 Examiner : L. Edmondson
Filed : April 26, 2000
Title : CATHODE FOR AIR ASSISTED BATTERY

RECEIVED

MAR 11 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SECOND REQUEST TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 CFR §§1.8(b) and 1.181, applicant hereby requests that the Notice of Abandonment mailed August 4, 2003 (copy enclosed) be withdrawn. The application was abandoned under 37 CFR §1.135 for failure to respond to the Office Action mailed December 24, 2003.

Enclosed are copies of a previously filed Request to Withdraw Notice of Abandonment as filed on August 8, 2003 and a copy of the postcard stamped received by the PTO Mailroom on August 11, 2003. The Patent Examiner has informed applicants that this request cannot be found at the Patent and Trademark Office.

Also enclosed are a copy of a Reply and Comments on Statement of Reasons for Allowance mailed on March 24, 2003 and a copy of the postcard stamped received by the PTO Mailroom on March 31, 2003. The Reply and Comments on Statement of Reasons for Allowance include a certification that these documents were deposited with the United States Postal Service as first class mail with sufficient postage on March 24, 2003; the certification was signed by the undersigned attorney's secretary, Sherry L. Hunt. Enclosed is a copy of the Statement Of Timely Mailing Under 37 C.F.R. § 1.8 Statement Of Sherry L. Hunt

RECEIVED
MAY 11 2004
TC 1700

CERTIFICATE OF DELIVERY BY HAND

I hereby certify that this correspondence is being delivered by hand on the date indicated below and is addressed to the U.S. Patent and Trademark Office, Office of Petitions, Crystal Plaza 4, 2201 South Clark Place, Room 3C23, Arlington, VA 22202.

March 10, 2004
Date of Delivery
Signature J. Banks
Typed or Printed Name of Person Signing Certificate

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,649
Filed : April 26, 2000
Page : 2 of 2

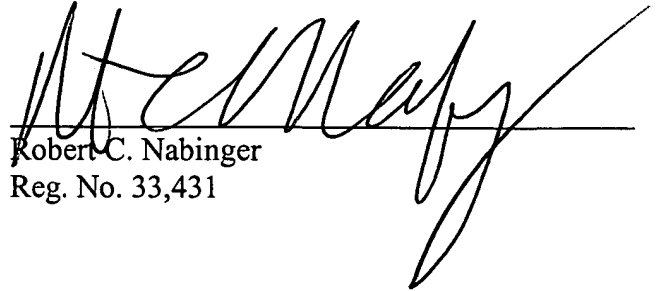
Attorney's Docket No.: 08935-17000 / M-4860

Thus, the Notice of Abandonment was issued in error and Applicants respectfully request that it be withdrawn and the application processed for issuance. Because the Notice of Abandonment was issued as a result of an error by the Patent Office, we believe that no fees are required for our request. If that is not correct, please charge the required fees to our Deposit Account No. 06-1050.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: March 9, 2004


Robert C. Nabinger
Reg. No. 33,431

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906



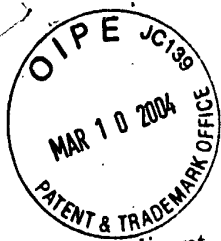
RECEIVED

MAR 11 2004

Attorney's Docket No. 08935-170001	Express Mail Label No.	Mailing Date January 27, 2004
Application No. 09/558,645	Filing Date April 26, 2000	Attorney/Secretary Init RCN/slh
Title of the Invention CATHODE FOR AIR ASSISTED BATTERY		
Applicant Alexander Kaplan et al.		
Client Reference No. M-4860		
Enclosures ·Reply (10 pages) (COPY) ·Status Inquiry ·Other: COPY of Request to Withdraw Notice of Abandonment; copy of Comments on Statement of Reasons for Allowance; copy of postcard stamped received by the PTO Mailroom on March 31, 2003; COPY of Statement Of Timely Mailing Under 37 C.F.R. § 1.8 Statement Of Sherry L. Hunt; copy of postcard stamped received by the PTO Mailroom on August 11, 2003		

For PTO Use Only
Do Not Mark in This Area

RECEIVED
MAY 11 2004
TC 1700



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al.

Serial No. : 09/558,645

Filed : April 26, 2000

Title : CATHODE FOR AIR ASSISTED BATTERY

Art Unit : 1745

Examiner : L. Edmondson

RECEIVED

MAR 11 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

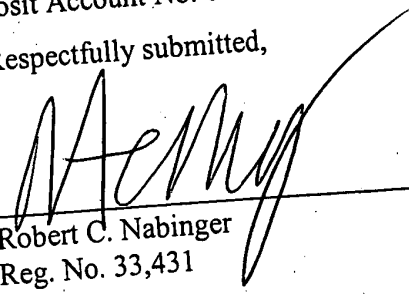
STATUS INQUIRY

Applicants respectfully inquire as to the status of the above application. The application was filed on April 26, 2000 and its last known status was a Request to Withdraw Notice of Abandonment filed on August 8, 2003 (copy enclosed).

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: January 27, 2004


Robert C. Nabinger
Reg. No. 33,431

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20793670.doc

RECEIVED
MAY 11 2004
TC 1700

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

January 27, 2004

Date of Deposit


Signature


Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate



RECEIVED

MAR 11 2004

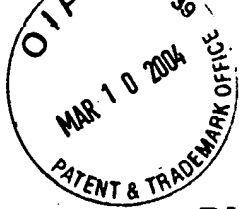
Attorney's Docket No. 08935-170001	Express Mail Label No.	Mailing Date August 8, 2003	For PTO Use Only <i>Do Not Mark in This Area</i> 
Application No. 09/558,645	Filing Date April 26, 2000	Attorney/Secretary Init RCN/slh	
Title of the Invention CATHODE FOR AIR ASSISTED BATTERY			
Applicant Alexander Kaplan et al.			
Enclosures ·Reply (10 pages) (COPY) ·Other: Request to Withdraw Notice of Abandonment; copy of Comments on Statement of Reasons for Allowance; copy of postcard stamped received by the PTO Mailroom on March 31, 2003 ·Statement Of Timely Mailing Under 37 C.F.R. § 1.8 Statement Of Sherry L. Hunt <u>M-4860</u>			

RECEIVED
MAY 11 2004
TC 1700

Attorney's Docket No. 08935-170001	Express Mail Label No.	Mailing Date March 24, 2003	For PTO Use Only <i>Do Not Mark in This Area</i>
Application No. 09/558,645	Filing Date April 26, 2000	Attorney/Secretary Init RCN/slh	
Title of the Invention CATHODE FOR AIR ASSISTED BATTERY			
Applicant Alexander Kaplan et al.			
Enclosures ·Reply (10 pages) ·Other: Comments on Statement of Reasons for Allowance			



RECEIVED
 MAY 11 2004
 TC 1700



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al.

Art Unit : 1745

Serial No. : 09/558,645

Examiner : L. Edmondson

Filed : April 26, 2000

Title : CATHODE FOR AIR ASSISTED BATTERY

RECEIVED

MAR 11 2004

Commissioner for Patents
Washington, D.C. 20231

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

In response to the Examiner's reasons for allowance of claims 39-43 in the Office Action dated December 24, 2002, Applicants do not concede that the reasons for allowance given by the Examiner are the only reasons for which the claims are allowable. The claims are also allowable for other and independent reasons, including the reasons set forth in Applicants' prior communications. Applicants also do not necessarily agree with the Examiner's characterization of the cited references.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: March 24, 2003

Tu N. Nguyen

Tu N. Nguyen
Reg. No. 42,934

Fish & Richardson P.C.
225 Franklin Street
Boston, Massachusetts 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20563594.doc

RECEIVED
MAY 11 2004
TC 1700

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

March 24, 2003

Date of Deposit

Sherry L. Hunt

Signature

Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al. Art Unit : 1745
 Serial No. : 09/558,645 Examiner : L. Edmondson
 Filed : April 26, 2000
 Title : CATHODE FOR AIR ASSISTED BATTERY

Commissioner for Patents
 Washington, D.C. 20231

RECEIVED

MAR 11 2004

REPLY

In reply to the action mailed December 24, 2002, please amend the application as indicated on the following pages. Applicant asks that all claims be allowed in view of the remarks contained on the following sheets, a total of 10 pages.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: MARCH 24, 2003

Tu N. Nguyen
 Tu N. Nguyen
 Reg. No. 42,934

Fish & Richardson P.C.
 225 Franklin Street
 Boston, Massachusetts 02110-2804
 Telephone: (617) 542-5070
 Facsimile: (617) 542-8906

20619859.doc

RECEIVED
 MAY 11 2004
 TC 1700

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

March 24, 2003
 Date of Deposit
Sherry L. Hunt
 Signature
Sherry L. Hunt
 Typed or Printed Name of Person Signing Certificate

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645
Filed : April 26, 2000
Page : 2

Attorney's Docket No.: 08935-170001 / M-4860

In the specification:

Please insert the following paragraph before the first paragraph of page 1 of the specification, directly underneath the title:

CLAIM OF PRIORITY

This application claims priority under 35 U.S.C. § 120 to U.S. Patent Application Serial No. 09/487,355, filed on January 19, 2000, now U.S. Patent No. 6,372,370 B1, and to U.S. Patent Application Serial No. 09/544,076, filed on April 6, 2000, now U.S. Patent No. 6,399,243 B1.

In the claims:

The status of the claims in the application is as follows:

- 1-14. (Cancelled)
15. (Original): An air recovery battery comprising:
- (a) a container having an air access port;
 - (b) a cathode comprising a cathode paste containing at least about 60% by weight MnO_2 , wherein the MnO_2 consists essentially of electrochemically synthesized MnO_2 ;
 - (c) an anode comprising zinc; and
 - (d) a separator between the cathode and the anode.
16. (Original): The battery of claim 15, wherein the cathode paste contains at least about 70% by weight MnO_2 .
17. (Original): The battery of claim 16, wherein the cathode paste contains at least about 80% by weight MnO_2 .
18. (Original): The battery of claim 17, wherein the cathode paste contains at least about 85% by weight MnO_2 .
19. (Original): The battery of claim 18, wherein the cathode paste contains at least about 90% by weight MnO_2 .
20. (Original): The battery of claim 15, wherein the cathode paste contains at least about 2% by weight of a hydrophobic polymer.
21. (Original): The battery of claim 20, wherein the cathode paste contains at least about 3% by weight of a hydrophobic polymer.

22. (Original): The battery of claim 21, wherein the cathode paste contains at least about 4% by weight of a hydrophobic polymer.

23. (Original): The battery of claim 22, wherein the cathode paste contains at least about 5% by weight of a hydrophobic polymer.

24. (Original): The battery of claim 23, wherein the cathode paste contains at least about 6% by weight of a hydrophobic polymer.

25. (Original): The battery of claim 24, wherein the cathode paste contains at least about 7% by weight of a hydrophobic polymer.

26. (Original): The battery of claim 15, wherein the cathode further comprises a current collector.

27. (Original): The battery of claim 15, wherein the battery is a cylindrical battery.

28. (Original): The battery of claim 27, wherein the battery is a AAA battery.

29. (Original): The battery of claim 27, wherein the battery is a AA battery.

30. (Original): The battery of claim 27, wherein the battery is a C battery.

31. (Original): The battery of claim 27, wherein the battery is a D battery.

32. (Original): The battery of claim 15, wherein the battery is a prismatic battery.

33. (Original): The battery of claim 15, wherein the battery is a racetrack battery.

34. (Original): A method for making an air recovery battery, the method comprising:

(a) combining MnO_2 , carbon, and a binder to form a cathode paste, wherein the MnO_2 consists essentially of electrochemically synthesized MnO_2 , and wherein the cathode paste contains at least about 60% by weight MnO_2 ;

(b) spreading the cathode paste on a current collector to form a cathode;

(c) inserting the cathode into a container, wherein the container includes an air access port;

(d) inserting anode material into the container, wherein the anode material comprises zinc; and

(e) sealing the container.

35. (Original): The method of claim 34, wherein the cathode paste contains at least about 70% by weight MnO_2 .

36. (Original): The method of claim 35, wherein the cathode paste contains at least about 80% by weight MnO_2 .

37. (Original): The method of claim 36, wherein the cathode paste contains at least about 85% by weight MnO_2 .

38. (Original): The method of claim 37, wherein the cathode paste contains at least about 90% by weight MnO_2 .

39. (Original): A method for making a rechargeable cathode, the method comprising:

(a) combining a catalyst, carbon particles, and a solvent to form a mixture;

(b) combining the mixture with a hydrophobic polymer at a temperature below about 10°C to form a paste;

(c) stirring the paste at a temperature below about 10°C ; and

(d) warming the paste to at least about 20°C and mixing the paste at this temperature.

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645.
Filed : April 26, 2000
Page : 6

Attorney's Docket No.: 08935-170001 / M-4860

40. (Original): The method of claim 39, wherein step (c) comprises stirring the paste under vacuum.

41. (Original): The method of claim 39, wherein step (d) comprises stirring the paste under vacuum.

42. (Original): The method of claim 39, wherein step (c) comprises stirring the paste at a speed of about 15 rpm.

43. (Original): The method of claim 39, wherein step (d) comprises stirring the paste at a speed of about 15 rpm.

REMARKS

Applicants have amended the specification to include a claim of priority to U.S. Patent No. 6,399,243 B1. The present application includes as an inventor one who was named as an inventor in U.S. Patent No. 6,399,243 B1. Applicants also have amended the specification to include a claim of priority to U.S. Patent No. 6,372,370 B1. The present application includes as an inventor one who was named as an inventor in U.S. Patent No. 6,372,370 B1.

Claims 15-43 are pending in the application. Applicants acknowledge the Examiner's indication that claims 39-43 are allowed. Claims 15-38 were rejected on various grounds, each of which is addressed below.

Rejections Under 35 U.S.C. § 102

Urry (U.S. Patent No. 6,383,674 B1)

Claims 15-19, 26, 27, 29, 32 and 33 were rejected under 35 U.S.C. § 102(e) as being anticipated by Urry (U.S. Patent No. 6,383,674 B1). Applicants traverse this rejection.

Claim 15 is directed to an air recovery battery that includes a cathode comprising a cathode paste containing at least about 60% by weight MnO₂. Claims 16-19, 26, 27, 29, 32 and 33 depend, directly or indirectly, from claim 15 and thus contain this limitation as well.

Urry does not disclose a battery with a cathode having at least 60% by weight MnO₂. Urry describes an electrochemical cell having a cathode including a manganese dioxide coating. Regarding Urry, the Examiner stated, "Urry teaches an air battery comprising a container (20) having . . . a cathode (60) coated on a collector (foil), the coating may comprise 100% MnO₂" (Office Action, p. 2). The Examiner referred to the following section of Urry as support for the argument that the cathode in Urry contains 100% MnO₂:

Positive electrode 60 may be formed by coating MnO₂ or EMD on a nickel-coated or plain steel thin foil. The MnO₂ or EMD is preferably coated on both sides of the foil to provide a positive electrode 60 having a thickness of approximately 5 mils (0.127 mm). The steel foil upon which the MnO₂ or EMD is coated preferably has a thickness of between 0.5 and 1.0 mil (0.0127 to 0.0254 mm).

Although the ratio of MnO_2 to Zn within a cell of the present invention may vary, it is preferable that only enough MnO_2 per cell is provided to handle at least one pulse discharge. The MnO_2 may then be recharged by the air electrode during a pulse and during a rest period following the pulse. (Urry, col. 6, lines 34-45).

Applicants note, however, that after the above-quoted section of Urry, Urry describes calculations used to estimate the performance of a cell including the above-referenced cathode. In describing these calculations, Urry states that the positive electrode is made out of a "graphite/ MnO_2 mixture having about 70% volume solids bonded to the foil" (Urry, col. 7, lines 21-22) (emphasis added). Thus, it is clear that the cathode disclosed in Urry is not 100% MnO_2 . Rather, it is a mixture of MnO_2 , graphite, and at least one other component. Therefore, claims 15-19, 26, 27, 29, 32 and 33 are not anticipated by Urry, and the rejection under § 102(e) should be withdrawn.

Kaplan et al. (U.S. Patent No. 6,399,243 B1)

Claims 15-29 and 33-38 were rejected under 35 U.S.C. § 102(e) as anticipated by Kaplan et al. (U.S. Patent No. 6,399,243 B1). Applicants have amended the specification to include a priority claim to U.S. Patent No. 6,399,243 B1, and submit that this rejection may now be withdrawn.

Rejections Under 35 U.S.C. § 103

Urry (U.S. Patent No. 6,383,674 B1) and Passaniti et al. (U.S. Patent No. 6,261,709)

Claims 20-25 and 34-38 were rejected under 35 U.S.C. § 103(a) as unpatentable over Urry (U.S. Patent No. 6,383,674 B1) in view of Passaniti et al. (U.S. Patent No. 6,261,709). Applicants traverse this rejection.

Claims 20-25 depend, directly or indirectly, from claim 15. Therefore, the cathode paste of the battery cathode of claims 20-25 contains at least about 60% by weight MnO_2 . Claim 34 is directed to a method for making an air recovery battery that includes forming a cathode paste that contains at least about 60% by weight MnO_2 . Claims 35-38 depend, directly or indirectly, from claim 34 and therefore also contain this limitation.

As discussed above, Urry does not disclose a weight percent of MnO_2 for its cathode paste. Passaniti does not cure the deficiencies of Urry because Passaniti also does not disclose a weight percent for MnO_2 in a cathode paste. The Examiner's rejection of claims 20-25 and 34-38 under 35 U.S.C. § 103(a) should therefore be withdrawn.

Urry (U.S. Patent No. 6,383,674 B1) and Kordes et al. (U.S. Patent No. 3,945,847)

Claims 20-23, 27, 28, 30, 31 and 34-38 were rejected under 35 U.S.C. § 103(a) as unpatentable over Urry (U.S. Patent No. 6,383,674 B1) in view of Kordes et al. (U.S. Patent No. 3,945,847). Applicants traverse this rejection.

Claims 20-23, 27, 28, 30, and 31 depend, directly or indirectly, from claim 15. Claims 35-38 depend, directly or indirectly, from claim 34. All of the claims require a cathode with a cathode paste including at least about 60% by weight MnO_2 , or the formation of a cathode paste including at least about 60% by weight MnO_2 . As discussed above, Urry does not disclose such a cathode paste.

Furthermore, there would have been no motivation for a person of skill in the art to combine the teachings of Urry with those of Kordes. Urry teaches an air-assisted electrochemical cell that is structured so as to minimize the passage of air to the zinc anode. Kordes teaches the use of a polymeric binder to give the MnO_2 in an electrode better cohesion, and does not even mention air-assisted electrochemical cells. Thus, contrary to the Examiner's claim, it would not have been obvious to one of skill in the art to combine the teachings of Urry with those of Kordes. There would have been no motivation to combine Urry, which relates to an air-assisted cell, with Kordes, which does not relate to cells containing air ports, as the chemistries and requirements for air-assisted cells, i.e., cells with air ports, are different from those for cells without air ports. Therefore, the Examiner's rejections to claims 20-23, 27, 28, 30, 31 and 34-38 based on the combination of Urry with Kordes should be withdrawn.

Kaplan et al. (U.S. Patent No. 6,399,243 B1)

Claims 30 and 31 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kaplan et al. (U.S. Patent No. 6,399,243 B1). As noted above, Applicants have amended the specification

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645
Filed : April 26, 2000
Page : 10

Attorney's Docket No.: 08935-170001 / M-4860

to include a priority claim to U.S. Patent No. 6,399,243 B1. Therefore, Applicants submit that this rejection may now be withdrawn.

Applicants believe that the claims are in condition for allowance, which action is requested.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645
Filed : April 26, 2000
Title : CATHODE FOR AIR ASSISTED BATTERY

Art Unit : 1745
Examiner : L. Edmondson

RECEIVED

MAR 11 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

STATEMENT OF TIMELY MAILING UNDER 37 CFR §1.8
STATEMENT OF SHERRY L. HUNT

I, SHERRY L. HUNT, declare as follows:

I am an employee of the law firm of FISH & RICHARDSON P.C. and have been a patent law secretary for 15 years.

On March 24, 2003, I signed the certificate of mailing stamped directly on the correspondence entitled Reply and Comments on Statement of Reasons for Allowance, which indicated that the correspondence and accompanying postcard and check were being deposited with the United States Postal Service on March 24, 2003. I made photocopies for the file, sealed the originals in a special envelope preprinted with the address of the Assistant Commissioner of Patents, and left the envelope in one of the designated "pick-up stations".

Knowing the procedures for outgoing mail and my own experience with them, I had reasonable basis to expect that the correspondence would be deposited with the United States Postal Service on the date indicated.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

August 8, 2003

Date of Deposit

Signature

Sherry L. Hunt

Typed or Printed Name of Person Signing Certificate

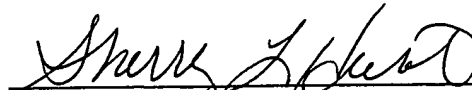
Applicant : Alexander Kaplan et al.
Serial No. : 09/558,645
Filed : April 26, 2000
Page : 2 of 2

Attorney's Docket No.: 08935-170001 / M-4860

Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

Date: August 8, 2003


Sherry L. Hunt

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

20706622.doc